added certainty afforded by the VIP with respect to the recent UNE rate reductions, the availability of the UNE platform, Verizon's wholesale performance, and the resolution of CLEC service delivery and billing problems will encourage competitors to resume their efforts to enter the market. Z-Tel considers the Joint Proposal to be in the public interest.

3. BridgeCom International

BridgeCom describes its goal in the proceeding as arriving at a "fair and equitable agreement which would encourage the development of competition in local exchange markets, while at the same time assuring improvements in service quality to all customers and protecting retail customers from unreasonable rate increases" and says "approval of the Joint Proposal will help achieve those goals."[22] BridgeCom cites several provisions of the Joint Proposal that it regards as essential to the continued development of competition in the local exchange market; these include Verizon's commitment not to challenge the UNE order, the expanded availability of the UNE platform without any "glue charge" (though BridgeCom does not waive its rights to continue to press for continuation of the expanded UNE platform beyond the two years of the plan), the limitation to $35 of the charge for hot cut conversions, and the resolution of the White Paper issues in a manner that precludes cost recovery.[23] Overall, BridgeCom asserts that "approval of the Joint Proposal will be in the best interests of business and residential consumers in this State, competitive carriers, Verizon itself, and the public at large. By encouraging the development of competition, the Plan will bolster the economy of this State and lead to use of new and efficient technologies, the introduction of more and innovative services, and the

[22] BridgeCom's Statement in Support, p. 1.

[23] BridgeCom requests in this regard that we confirm its understanding that the $.55 per line rate approved in the UNE order for OSS development and implementation costs will be withdrawn.

establishment of wholesale and retail rates which are just and reasonable."[24]

4. Cablevision Lightpath

While asserting that the UNE order and the Joint Proposal are the latest in a series of steps that demonstrate New York's commitment to the development of effective competition in the local exchange market, Lightpath urges us now to turn to the question of efficient and effective interconnection, an issue that it regards as paramount to facilities-based carriers in New York. It stresses the important role of facilities-based carriers and urges us, "as a complement to progress made on behalf of UNE-P competitors in the current proceeding, to address promptly the need for appropriate and effective measures to streamline interconnection."[25]

5. AT&T

AT&T notes that Staff, in its supporting testimony, stresses that it could not have entered into the settlement without a reasoned confidence that the new UNE rates would permit effective retail competition in all local markets, based upon its margin analysis. AT&T agrees with the Staff analysis that retail price competition based on UNEs could act as an effective alternative to retail rate regulation.

AT&T represents that, with the UNE rate decision and the settlement, it can compete aggressively across the broad spectrum of the local market. Without detailing its competitive plans, it intends to be a force in the New York market to compete in the short term and to invest for the long.

As to the grant of increased retail rate flexibility to Verizon, AT&T argues, the trade-off is exactly correct. The transition from monopoly to competitive conditions should always include a transition from regulated pricing to market-driven

24 BridgeCom's Statement in Support, p. 5.

25 Lightpath's Comments, p. 3.

pricing. It believes the current conditions will support price competition, and supports the timing of this decision.[26]

RESPONSIVE COMMENTS

Attorney General

Noting that his goals in the proceeding have been to promote and accelerate the growth of competitive local markets throughout the State and to ensure fair rates and treatment for retail ratepayers in the transition to those markets, the Attorney General believes the Plan's provisions are essential to the first of those goals but that they fall short of achieving the second, in that they rely too heavily on competitive markets to moderate Verizon's rates and ensure its service quality.

The Attorney General comments favorably on and supports the provisions of the VIP related to wholesale rates and other aspects of the relationship between Verizon and its competitors. He believes those provisions are "essential for New York to remain in the vanguard of competition and widespread customer choice," notes the widespread CLEC support for the VIP, and assumes those competitors "will now find it in their business interest to enter the New York market in strength."[27]

He asserts that "competition, especially for residential and small business customers, has not yet become enough of a reality so as to diminish the need for sufficient regulation of the dominant provider. The VIP should go far to further the transition. In the interim, Verizon-NY's retail ratepayers need more protection in the form of reasonable rates and incentives for good service quality performance than this plan now provides."[28]

Turning to matters of service quality, the Attorney General notes both the improvements since 1995 and the continued failure to meet some PRP targets and the penalties incurred by Verizon on that account. He therefore expresses concern that

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26 Tr. 610-611.

27 Id., p. 7.

28 Attorney General's Comments, p. 2.

some of the VIP's service quality provisions fail to insure maintenance of past improvements in service performance. He suggests, among other things, that some performance objectives be disaggregated by district for purposes of assessing penalties (albeit it not for purposes of determining whether to suspend price flexibility) in order to ensure adequate performance in all regions. In addition, he favors more rigorous service quality objectives with respect to the customer trouble report rate and the PSC complaint rate. He suggests as well that penalty levels be graduated to reflect the magnitude of the shortfall from the target; that the "outlier" performance objective be made more rigorous and that a $100,000 penalty be imposed for each outlier; that the first review of Verizon's service quality performance take place six months, rather than one year, after approval of the Plan; and that pricing flexibility be suspended whenever a single annual performance objective is missed, rather than only if two or more objectives are missed, as the Plan provides.

With respect to rate increases and pricing flexibility, the Attorney General recognizes the need to strike a balance between regulation and deregulation as the transition to competition proceeds but expresses concern that the balance here may go too far in the direction of deregulation, given Verizon's continued status as the dominant provider of local service. He recommends as well that the transition from regulatory accounting to GAAP and SEC accounting take place over five years rather than over three in order to avoid creating excess revenue requirements associated with too fast a transition, thereby diminishing the need for 3% annual rate increases. He notes in this regard the FCC's rejection two years ago of a proposal by incumbent local exchange carriers to accelerate depreciation, and its determination that traditional depreciation rates could be waived only if the additional depreciation cost were booked below the line and thus borne by shareholders.

The Attorney General endorses the VIP's resolution of the White Paper issues, but expresses concern that the Plan cancels various other potential ratepayer benefits and claims. These include a $55 million penalty for Verizon's failure to meet one of the service quality standards associated with approval of the NYNEX/Bell Atlantic merger, as well as several other benefits potentially available to ratepayers under the PRP (which would be terminated six months earlier than its August 31, 2002 expiration date) and otherwise.

Finally, the Attorney General regards the two-year term of the VIP as appropriate, given the degree of uncertainty about the future development of competition and the potential need to reassess matters as soon as two years from now. He also notes favorably the provision recognizing our authority to modify or terminate the Plan in mid-term should intervening circumstances render Verizon's rates unjust or unreasonable.

CompTel

CompTel supports the Joint Proposal and notes favorably its pro-competitive enhancements, particularly those related to UNE rates and UNE-P availability. It urges us, however, "to ensure that the pro-competitive aspects of the Plan are implemented and enforced in the same spirit in which they were negotiated and resolved--that is, with dedication and perseverance."[29] In addition, it urges us to establish, before the Plan's expiration, a process to assess the need to extend the term for some of the pro-competitive provisions.

PULP

PULP expresses concern about the Joint Proposal's failure to address difficulties now being experienced in the telephone Lifeline program. PULP explains that although the New York telephone Lifeline program is "robust" in comparison to those in other states, enrollment has declined precipitously over the last five years. PULP attributes the decline to the fact that Lifeline enrollment is tied to eligibility for other low-income assistance programs and that as eligibility for those

[29] CompTel's Comments, p. 2.

programs declines, so does access to Lifeline. To respond to the problem, PULP proposes that three programs be added to the list of those creating telephone Lifeline eligibility: The National Free/Reduced School Lunch Program, The State Earned Income Tax Credit Program, and the Child Health Plus Program. PULP suggests that each of these programs encompasses the same income levels as the existing programs and that they are unlikely to see significant shifts in enrollment resulting from welfare reform.

PULP asserts as well that if these additional customers were able to access the telephone Lifeline program, virtually all of the increased cost would be paid by the federal government through the Federal Universal Service Fund and the State Targeted Assistance Fund. As a result of those arrangements, any revenue gain to Verizon associated with the customer moving from Lifeline to non-Lifeline basic service would be offset by revenue losses resulting from reduced federal or state support money.[30]

In its closing statement and in reply, PULP asserts that expanding the number of programs that provide Lifeline eligibility will have no negative impact on Verizon revenues, citing Verizon's response to recent PULP interrogatory requests.[31] PULP reiterates its view that if there is no provision to designate additional Lifeline qualifying programs, the Commission should reject the Joint Proposal. In response, Verizon counters that low-income New Yorkers have telephone service at a rate exceeding the comparable population nationwide, and that in November and December 2001 Lifeline customers increased by 11,000.

<u>ChoiceOne</u>

ChoiceOne "supports the Joint Proposal's spirit and goals," but expresses concern that the parties' understandings and agreements may not be fully reflected in the document. It

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[30] PULP's Prefiled Testimony, p. 6.

[31] Verizon response to PULP-VZ-3B, Exhibit 15.

therefore seeks a series of clarifications.[32] Its requested clarifications include the Performance Assurance Plan, terms and prices for hot cuts, task force deadlines, service quality parity, and OSS cost recovery.

Finally, ChoiceOne asks for clarification that the Joint Proposal would apply to all carriers, whether or not signatories.

Public Comments

To inform the public about the joint proposal and to solicit public comment, the subject was featured on the front page of AskPSC.com, and an e-mail was sent to the business community. A press release announced the vehicles - the Opinion Line and the AskPSC.com - available for public comment and included a summary of the proposal's major provisions. The AskPSC.com website had a direct link to the Consumer Comment Form.

Thirty comments were received from the Opinion Line and through AskPSC.com. Most who commented were against the proposal; several offered a few general remarks related to both the Commission and Verizon; one person asked that meetings about the proposal be held in his area. A few people mentioned that they formerly worked for Verizon.

Of the public comments addressing relevant issues, the majority reflected concerns about rates, both now and what they would be under the proposal, high surcharges and taxes; poor quality of service; the lack of competition in parts of the State; and less frequent reporting under the proposal than what is presently in place.

After consideration of the comments, in the context of the balance of the record in this proceeding, we remain confident that the provisions of the Joint Proposal will improve the conditions for the growth of competition and protection of consumers, with an appropriate level of regulatory oversight.

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[32] ChoiceOne's Comments, pp. 1-2.

DISCUSSION

In our determination as to the terms of the Joint Proposal, we have considered the evidence in the records of these proceedings, including the parties' and others' statements, testimony adduced at the February 19, 2002 evidentiary hearing, closing statements at that hearing and the subsequent reply briefs. A number of concerns regarding specific terms or asserted omissions of the Joint Proposal are considered and decided here.

Requests for Clarification or Modification of the terms of the Joint Proposal.

Certain parties have requested clarification or modification of the terms of the Joint Proposal.

PULP proposes, as a condition for its support for the Joint Proposal, that residents who qualify for National Free/Reduced Lunch, the State Earned Income Tax Credit, and Child Health Plus be eligible for Lifeline. Verizon objects, stating that 8% of its customers receive Lifeline service, and that increases in its contributions to the state universal service fund, in particular, would be burdensome. Moreover, it is unclear whether the uncontested decline in Lifeline customers is attributable to changes in federal assistance programs or to increased scrutiny of customers' eligibility.

The Federal-State Joint Board on Universal Service is currently conducting a proceeding to determine what, if any, changes should be made in the federal low-income program eligibility. We will await the outcome of that review before addressing whether additional changes to the New York State program are advisable. Accordingly, noting that the Joint Proposal requires a reduction in the current connection charge for Lifeline to $5.00 and outreach and education programs, we adopt the relevant terms as proposed.

BridgeCom urges the Commission to clarify the extent of Verizon's obligation to provide the UNE platform under the terms of the Joint Proposal. In BridgeCom's view, the Pre-Filing Statement, as modified by the terms of the Joint

Proposal, guarantees that the UNE platform will be available without line limitation for residential customers statewide; and for business POTS customers in all central offices of the state, with the exception of specifically designated New York City central offices, without limitation as to the number of lines; and for business POTS customers in those New York City central offices where a customer uses 18 lines or less at a specific location. Further, BridgeCom seeks clarification that those designated New York City central offices are and will remain the 17 set forth in Verizon's 916 Tariff.[33] Staff, in reply, asserts that the Joint Proposal modifies the four-line restriction to 18 lines as to those central offices, but does not create any new restriction.[34] Staff replies that FCC requirements subsequent to the Pre-filing Statement limited UNE platform availability for business to customers with fewer than four lines in the designated New York City central offices (17 New York City central offices where, by the beginning of the Pre-Filing Statement duration period, two or more CLECs were collocated for the provision of local service). Verizon, also in reply, undertakes to provide the UNE platform at wholesale tariffed rates to a requesting competitor to serve a business customer with 18 or fewer lines in any part of its service territory. We see no ambiguity in the terms of the Joint Proposal and accordingly require Verizon to provide the UNE platform for business customers outside of New York City without restriction and in central offices in New York City that meet the two-

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[33] BridgeCom's Reply, p.4, citing PSC No. 10-Communications Tariff (filed August 1, 2001 to be effective September 1, 2001).

[34] BridgeCom also seeks clarification as to the duration period for the provision of the UNE Platform under the Pre-Filing Statement. We agree with Staff that the four- and six-year duration periods began with FCC approval of Verizon's New York §271 petition in December 1999.

collocation criterion for business customers with up to 18 lines for the duration of the Pre-filing Statement.[35]

Assemblyman Brodsky expresses concern about the abbreviated comment process on the Joint Proposal, noting that the negotiation process tends to leave the public with relatively little information about the proceeding.[36] Assemblyman Brodsky raises three concerns. He asserts, first, that the fairness and reasonableness of the proposed rate increase cannot be adequately understood within the time available for comment. Second, he objects to the Plan's failure to include funding for the functions previously performed by the Diffusion Fund created under the PRP as a means of improving telecommunications infrastructure in underserved low-income communities. He urges modification of the Plan to include such funding, in the amount of $10 million over two years, allocated among all market participants. Additionally he expresses concern over a reduction in service quality standards. He suggests the PRP's service quality requirements resulted in a significant improvement in service, objects to any loosening of standards, and urges continuation of service quality standards set on a regional basis. Assemblyman Brodsky's office reiterated at the evidentiary hearing these concerns about the absence of a technology diffusion fund from the VIP, retail rate and service quality concerns, and the adequacy of the process. As to rates and service quality we have considered the evidence and parties' arguments on these issues and see no reason to modify or reject the Joint Proposal. As to the diffusion fund, as Verizon points out in response, this issue is more appropriately considered in the broader context of universal

[35] In compliance with the UNE Order and in anticipation of Commission approval of the Joint Proposal, Verizon filed a tariff that establishes the terms and conditions for provision of UNE-P. As part of the filing, Verizon acknowledges, it incorrectly limited availability in 30 central offices, listed in Appendix B of Verizon Tariff Number 10. The proper reference should be Appendix C, that includes 17 central offices in New York City.

[36] Assemblyman Brodsky's Comments, p. 1.

service. The technology diffusion fund incorporated in the Performance Regulatory Plan predated the 1996 Act, which provides a comprehensive framework for universal service support on a competitively neutral basis. New York has participated in and benefited from the federal schools and libraries program, as well as a state Targeted Assistance Fund. It is in this context that proposals for additional funding must be raised. Accordingly, we see no need to modify the Joint Proposal in this regard. Finally, as to procedure, because of the opportunities for participation commencing with the May 2001 Verizon filing of a proposed incentive plan, and the active involvement of industry, consumer and government parties representing federal, state, and New York City government, we see no need to revisit the Joint Proposal and delay implementation of its benefits to competition.

The Attorney General, in a closing statement, expressed the hope that the terms of the Joint Proposal, in the context of the wholesale rates established in the UNE Order, would provide the needed transition to greater competitiveness for local telecommunications. While raising the concern that retail customers could be paying too much for too little service if competition fails to flourish, the Attorney General expressed a commitment to join in the effort to maximize competitive opportunities. As to the Attorney General's proposals to strengthen certain service quality performance targets and adjust the financial incentives, Staff responds that the Joint Proposal terms represent only minimal modification of current targets, that the Commission's current standard should be applied, that the outlier provisions in the Joint Proposal are sufficient to prevent backsliding, and that the link between rate flexibility and service quality provides ample additional financial incentive. In Verizon's view, it has fulfilled its obligations under the Performance Regulatory Plan and provided its customers excellent service, arguing for the Joint Proposal service quality plan which measures service using statewide annual averages, with outlier provisions protecting against problem areas. Having considered the comments of the Attorney

General and other parties, the public and the evidence before us, we conclude that the service quality-related terms of the Joint Proposal will provide the necessary protections for retail consumers for three years.[37] Moreover, the link between rate flexibility and service quality guarantees sufficient incentive for Verizon to comply.

Cablevision Lightpath seeks to add to the Joint Proposal a rebuttable presumption that a three-year extension of an existing interconnection agreement is in the public interest. Verizon opposes, on the grounds that the presumption would interfere with the balance of parties' rights under and is inconsistent with the 1996 Act. We are concerned about the costs to competitors and incumbents of protracted and burdensome negotiations and litigation concerning renewal of interconnection agreements. We agree the process can be streamlined but the proposed modifications raise substantial concerns and we are not prepared here to order them.

Choice One seeks clarification or modification of the Joint Proposal to require specific outcomes and timetables for the task forces created to explore new products and eliminate bottlenecks, in particular for facilities-based competitors. Verizon, in reply, expresses concerns about further regulatory burdens imposed in the form of the task forces. We will adopt the terms of the Joint Proposal with respect to the task forces, on the assumption that Verizon's commitment of resources, the good faith participation of all interested parties, the involvement of Staff and the guidance of the Office of Hearings and Dispute Resolution will result in timely and effective solutions wherever feasible. Moreover, should the task forces fail to reach agreement on the issues with which they are charged, disputes will be resolved by the Commission. In addition, we share the expectation of Staff that the IDLC review

[37] In Reply, Verizon clarifies, as Choice One requested, that the Performance Assurance Plan remains in effect according to its terms. We agree.

will be undertaken within the relevant task force, conducted during and completed prior to the end of the term of the Plan.[38]

General Discussion

The Plan affords ratepayers the opportunity to take advantage of the benefits of the coming competitive marketplace, while, at the same time, it provides the stockholders an opportunity to mitigate the financial impacts of the significant UNE price reductions.

According to the extensive analysis provided by Staff of the current status of competition in New York, as of the beginning of this year, approximately 27% of Verizon's local access line market was served by CLECs operating in Verizon's territory. The Commission has long fostered competitive markets and we believe the record supports findings that the local market is open and customers enjoy sufficient competitive alternatives. The review of various competitive entry strategies reveals that consumer benefit is maximized when competing services are offered via competing networks or via enhanced, value-added platforms. We recognize, as parties have noted, the recent setbacks to the development of competition, including the upheaval in the capital markets and observable, adverse effects of the UNE prices set in the First Network Elements Proceeding, which allowed insufficient margin between UNE prices and Verizon's retail prices. The Plan addresses certain of these concerns, along with the recently reduced UNE prices. The stability provided by the Plan (through such features as Verizon's agreement not to challenge the UNE rates and not to claim exogenous costs) and the Plan's other competitive enhancements related to UNE Platform availability, charges, procedures, and other matters, will enable CLECs to continue to compete in New York. The resolution of the competitive issues to be addressed by the task forces and other competitive enhancements under the Plan also will enhance opportunities for facilities-based competitors.

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[38] Staff testimony, Tr. 526.

With respect to retail service quality, the significant improvement since 1995 (when the current PRP went into effect), together with the positive impact of competitive pressures on service quality, warrant a new approach, directed less to bringing service up to predetermined targets and more to maintaining quality at the new, higher levels. The Service Quality Plan permits Verizon to freely compete and invest while protecting consumers from serious erosion in telephone service quality. With rebates that may be paid to customers if service quality falls, and performance objectives crafted to discourage pockets of poor performance, backed by Verizon's risk that pricing flexibility will be suspended if service quality declines significantly and a process for monitoring performance, service quality protections afforded by the Plan are effective.

With respect to retail rate flexibility, we are persuaded that the limited flexibility accorded Verizon in the VIP will enable it to respond to competitive pressures without rendering rates unreasonable.

CONCLUSION

Based upon the evidence in this record, we adopt the terms of the Verizon Incentive Plan contained in the Joint Proposal. We find the Plan will result in the continued provision by Verizon of safe and adequate service at just and reasonable rates, and that its terms will significantly enhance the conditions for local telecommunication competition in New York.

The Commission orders:

1. Verizon New York Inc. (Verizon) is directed to file tariff amendments that implement price changes consistent with this order to become effective on a temporary basis on one day's notice.

2. Within 15 days of the issuance of this order, Verizon is directed to file tariffs that implement any additional pricing flexibility consistent with this order to become effective on a temporary basis immediately upon filing.

3. Upon filing the tariff amendments consistent with Ordering Clauses 1 and 2 above, Verizon shall serve copies on all active parties to this proceeding. Any party wishing to comment on the tariff amendments may do so by submitting 10 copies of its comments to the Secretary within 15 days of the date the amendments are filed. The tariff amendments shall not take effect on a permanent basis until approved by the Commission, subject to refund if found not to be in compliance with this order.

4. With respect to charges for services other than First Line Basic Service, Verizon must notify the Commission and its customers of an exercise of upward rate flexibility no less than 20 days prior to such rates taking effect. With respect to charges for First Line Basic Service, after the first year, Verizon must notify the Commission and its customers of an exercise of upward rate flexibility no less than 30 days prior to such rates taking effect.

5. For good cause shown, the requirement of newspaper publication of the tariff amendments is waived.

6. Verizon shall provide a credit to carriers purchasing 2-wire and 4-wire loop hot cuts sufficient to offset the difference between the cost-based rates established in the UNE Rate Order and a $35.00 charge, with no additional associated service order charges.

7. Verizon shall provide $15 million for a Forward Fund to satisfy any potential liability for refunds to eligible competitive carriers arising out of the Commission's establishment of temporary rates for the switching element, net of any reciprocal compensation payments due and owing to Verizon.

8. Task Forces concerning new products and services and the elimination of bottlenecks will be convened by the Office of Hearings and Dispute Resolution.

9. The parties' requested modification of the Commission determination in the UNE Rate Order issued January 28, 2002, that rates for the loop/switch interface be reviewed in May 2002 is granted, and the determination is

modified to postpone the completion of that review until the termination of the Plan.

10. The terms of the Joint Proposal filed in this proceeding on February 8, 2002, subject to Verizon's unconditional acceptance of this order as described below, are adopted in their entirety and are incorporated as part of this order.

11. Verizon must submit a written statement of unconditional acceptance of this order, signed and acknowledged by a duly authorized officer of Verizon, by February 28, 2002. This statement should be filed with the Secretary of the Commission and served on all parties in this proceeding.

12. These proceedings are continued.

By the Commission,

(SIGNED) JANET HAND DEIXLER
Secretary

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Sandra Dilorio Thorn
Vice President & General Counsel, NY & CT

February 8, 2002

BY HAND

Honorable Janet Hand Deixler
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: Case 00-C-1945

Dear Secretary Deixler:

Enclosed please find the Joint Proposal Concerning Verizon Incentive Plan for New York.

Respectfully submitted,

Sandra DiIorio Thorn

cc: Honorable Jaclyn A. Brilling (By E-mail and Hand)
Honorable Joel A. Linsider (By E-mail and Hand)
Honorable Eleanor Stein (By E-mail and Hand)
All Active Parties (By E-mail and Overnight Delivery)

CASE 00-C-1945

JOINT PROPOSAL CONCERNING VERIZON INCENTIVE PLAN

The undersigned parties jointly propose that the Public Service Commission approve the following Verizon Incentive Plan (the "Plan"). This Plan will supersede Verizon's Performance Regulation Plan which has been in effect since September 1, 1995 extinguishing all continuing rights and obligations under the Performance Regulation Plan.

The terms, conditions and underlying premises of the Plan are as described herein.

I. Premises: Verizon New York Inc.'s ("Verizon's") service performance under section 603 of the Commission's Rules is generally satisfactory and a service quality plan is in place to prevent backsliding to unacceptable performance levels. Active competition will exist across all market segments, UNE Rates will be as established by the Commission, UNE-P will remain available consistent with the Pre-Filing Statement of Bell Atlantic-New York, dated April 6, 1998 (the "PFS") as modified herein, and facilities-based competition will continue to develop.

II. Term of the Plan: The Plan is a two-year plan, beginning on March 1, 2002, with the Service Quality Plan extending one year beyond the Plan, through February 28, 2005.

III. Competitive Provisions

A. UNE Rates:

Rates for unbundled network elements and for the unbundled network element platform ("UNE" and "UNE-P") are as established by the Commission in its order in Case 98-C-1357, issued and effective January 28, 2002. The specific rates for the main elements and the platform are attached as Appendix A. As part of the proposed resolution, as described in C below, of the issues related to refunds described in the Commission's Order on Unbundled Network Elements

Rates,[1] the non-recurring charge for 2-wire and 4-wire hot cuts is $35.00, with no additional service order related charges.

B. UNE Availability:

For the term of this plan, notwithstanding any change in its obligations under Federal law, Verizon commits to modify its PFS commitments such that it will offer UNE-P to Competitive Local Exchange Carriers ("CLECs") serving small business customers (defined as business customers with 18 lines or less), on the same pricing and duration terms as its offering to CLECs for serving residential customers.

C. Relief Related to Temporary Switching Rate:

The issue of switching rate refunds is resolved as follows:

- For the term of the Plan, Verizon, in order to reach a settlement, agrees to a negotiated non-recurring charge for 2-wire and 4-wire loop hot cuts of $35.00 per loop, with no additional associated service order charges. This shall be accomplished by a credit provided by Verizon to the carrier sufficient to offset the difference between the cost-based rates established in the Commission's UNE Rate Order for these procedures and the $35.00 charge proposed herein.
- Verizon agrees to relinquish any right it may have to recovery of reciprocal compensation overpayments related to recalculation of switching costs or rates in the UNE Rate Order.
- Verizon agrees to provide $15 million (the "Forward Fund") to resolve the issues related to potential refunds to eligible competitive carriers. This Forward Fund payment will satisfy any potential liability for refunds arising out of the Commission's establishment of temporary rates for the switching element, net of any reciprocal compensation payments due and owing to Verizon.
- Eligibility for payment from the Forward Fund will be premised on the carrier's pre-existing right to seek retroactive relief based on having paid the temporary switching rate established in Verizon's tariff; no carrier shall be

[1] Case 98-C-1357-New York Telephone Company, Order on Unbundled Network Element Rates, issued

eligible for payment from the Forward Fund if it has obtained more than 5,000 hot cut lines in 2001 among all affiliates of such carrier. Only a carrier currently serving customers in the State of New York that relinquishes any claim it may have against Verizon related to switching rates for retroactive payments under interconnection agreements or otherwise will be eligible for payment from the Forward Fund.

- The Department of Public Service will conduct an expedited process in order to allocate the Forward Fund among eligible carriers. Any payments due to carriers from the Fund, net of reciprocal compensation paid to a carrier and its affiliates shall be made 50% in the form of an immediate bill credit and 50% in the form of bill credits over a 6-month period.

D. Other Competitive Enhancements:

1. New Products and Procedures:

The undersigned agree that they can and should share best industry practices in a number of areas to encourage competition and enhance cooperation between and among industry participants. While Verizon cannot commit to any specific outcome, it agrees to cooperate in a New Products and Services Task Force that will address a number of these issues, including best practices for billing and collection, building access and efficient provisioning for services where no facilities are available. The goal of the Task Force will be to attempt to establish processes and procedures that will standardize efficient wholesale transactions. No later than three months from the date of a Commission Order approving the Plan the Task Force will forward to the Commission a report detailing its findings, agreements and recommendations for industry best practices. The Task Force will focus specifically on the following:

a) Billing and Collection

- How to establish for all carriers a reasonable period of time for back billing, including the conditions under which exceptions would exist;
- How to develop billing verification tools for all carriers;

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and effective January 28, 2002 (the "UNE Rate Order").

- Whether reasonable procedures can be developed for initiating and responding to billing disputes for all carriers;
- Whether procedures/methods applicable to all carriers can be developed to minimize overbilling.

b) EELs/UNEs

- To facilitate the provisioning of service when a UNE order is rejected due to "lack of facilities", the Task Force will attempt to establish applicable pricing and provisioning protocols so that facilities can be provisioned in a reasonable time frame and at a reasonable price that is consistent with Verizon's retail offerings.

c) Virtual Building Connection Product

- Without any relinquishment of rights parties to the Task Force may otherwise have, and where legally and technically feasible, the Task Force will attempt to develop a product(s) to enhance carriers' ability to gain access to buildings.

2. **Elimination of Bottlenecks to Migrating Customers from UNE-P to CLEC facilities**:

Verizon will establish a Bottleneck Elimination Task Force to work with CLECs and staff to solve urgent facilities, hot cuts and other bottleneck problems. The Task Force will report back to the Commission on the status of these issues within 6 months.

IV. Service Quality Provisions

A. Retail Service Quality Plan: The following plan (the "Service Quality Plan") ensures the continued provision of quality telephone service for Verizon. The conditions of the Service Quality Plan are as follows:

Service Quality Term: The term of the overall Verizon Incentive Plan plus one year.

Definitions:

- Market Area: Verizon's operating area in the State of New York.

- Measurement Period: Twelve-month period. The first measurement period ends February 28, 2003.
- Redundancy Failure: A failure that occurs as a result of Verizon having an actual level of diversity less than the level Verizon certifies annually as existing in the Signaling System 7 ("SS7") and Enhanced 911 ("E911") networks where the appropriate level of diversity is determined in accordance with NYCRR 603.5(b)(3). Verizon's annual certification due July 1st each year over the Service Quality Term will detail the actual level of diversity in the SS7 and E911 networks overall as of the prior Calendar Quarter.
- Review Period: Annual period ending with the close of each Plan Quarter; the first review period ends February 28, 2003.
- All other terms are as defined in the Commission's Telephone Service Standards, Special Service Guidelines, and the Department's Emergency Plan.

Performance Objectives: The following objectives are the foundation of the Service Quality Plan and apply in the market area for each Measurement and Review Period.

- **Troubles:** Customer Trouble Report Rate ("CTRR") equal to or less than 3.3 per hundred access lines.
- **Out-of-Service:** Average percent out-of-service over 24 hours equal to or less than 20%.
- **Installation:** Average percent of initial basic service installed within 5 days or less greater than or equal to 80%.
- **Complaints:** A rate of less than 5.5 complaints per 10,000 lines.[2]
- **Outliers:**[3] No more than 175 Service Inquiry Reports filed in the initial Measurement Period, and 125 in any subsequent period where the number of service inquiry reports are determined in accordance with Appendix B.[4]

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[2] The Complaints target in this Plan presumes existing Public Service Commission complaint handling procedures. If, as a result of changes to either the complaint handling procedure or the types of complaints that are counted against Verizon, the degree of effort needed to meet this target is materially modified, Verizon and staff agree to adjust the Complaints target to reflect the impact of the reviewed procedures on Verizon's expected performance.

[3] The Outliers targets were determined by considering only certain service inquiry reports (i.e., based on trunks that originate and terminate at Verizon facilities only). Verizon agrees that it will also measure

Enforcement: Service related data will be provided to the Commission. Additional information staff deems appropriate will be provided upon request to the extent required by the Public Service Law.

Service Measurement Accuracy

1. Verizon's Quality Assurance Team ("QAT") shall ensure the internal controls are reasonably sufficient to assure net error rates of 5% or less in each measurement entity (*i.e.*, the percent of under-reporting errors minus the percent of over-reporting errors must be 5% or less) by the following:

    a) Monthly sampling reviews will be performed at the IMC level to assure accurate results. Any IMC that exceeds a (+/-) 1% Net Error rate will be subject to an adjustment of results based on a twelve-month rolling average of the monthly adjustment factors to be developed as the Plan progresses;
    b) The QAT will communicate the outcome of the sampling process with field directors who will take corrective actions to improve measurement accuracy. Staff shall be advised of any corrected results and remedial actions;
    c) Adjustments will be performed for Customer Trouble Report Rate (CTRR), Out of Service >24 Hours, and Service Affecting > 48 Hours measurements;
    d) If any measurement entity exceeds a (+/-) 5% Net Error rate, the Director will be required to prepare a written report indicating the analysis and corrective actions to be taken to insure accurate results. The QAT will monitor and insure compliance with this requirement;

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performance in a way that includes not only trunks that originate and terminate at Verizon owned facilities but trunks that terminate at facilities owned by other carriers (such as competitive local exchange carriers, interexchange carriers, and wireless carriers); however the latter will not be included for the purposes of the Service Quality Plan. Verizon also agrees that it will work closely with other carriers and Staff to limit the number of trunk blockages that occur.

[4] For the Outliers component of this Plan, the Maintenance and Installation service standards are measured on a Central Office and Installation Maintenance Center ("IMC") basis, except, however, that those

e) The QAT will implement the Manager Sampling Plan and the procedures for handling allegations of mis-reporting from the CWA "Hot-Line" (the "CWA Hot-Line Process") that are developed in compliance with the requirements of the Commission's "Order Adopting Report," issued May 17, 2001 in Case 01-C-0440 (the "May 2000 Order");

f) Each year the President of Verizon New York will attest to the fact that Verizon has implemented the above service measurement accuracy activities to be performed by the QAT.

2. Outside Review

a) Each year that the Service Quality Plan is operative Verizon shall hire an independent external auditor (hereafter Auditor) to review the procedures employed by the QAT (including the QAT process to sample and adjust results), the Manager Sampling Plan, the CWA Hot-Line Process, and other QAT oversight activities (e.g., answer time, installation and network blockage service quality measurements). As part of this review, the Auditor will perform a sampling of the QAT sample for comparison with the results obtained by the QAT. The Auditor will issue a report setting forth its findings based on its review of the QAT process;

b) If the Auditor finds any entity with a total gross error rate over 30%, a substantive audit of that entity by the Auditor shall be required. (This is not intended to limit the Auditor from recommending specific actions, such as a substantive audit, if an entity has a gross error rate less than 30%, but to serve as an out-of bounds requirement for specific action.) The total gross error rate is the sum of under-reporting errors plus the over-reporting errors;

c) The Request for Proposal ("RFP") for hiring the Auditor shall be reviewed by staff and interested parties prior to issuance.

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standards that are measured on an IMC basis can be changed to a Dispatch Resource Center basis or another, more highly aggregated basis, upon approval of Staff.

d) If the Auditor determines that Verizon has complied with the procedures to reasonably ensure accurate results as required herein, a detailed audit shall not be required. If the external auditor determines there were major deficiencies in Verizon's compliance, a detailed audit of the results for the year in question shall be conducted by the Auditor. The Auditor shall review compliance with the 5% net error process for each entity that exceeds a 5% net error rate to ensure that corrective actions are being taken; and

e) The Auditor shall make an annual report to Verizon of its findings and recommendations and this report shall be submitted to the Commission and provided to interested parties.

3. Verification of Penalty Payments – Verizon agrees to ensure that all penalties are issued accurately. This shall be accomplished by utilizing the existing Performance Regulation Plan rebate process currently employed by the QAT. When a credit is given, Verizon shall use the QAT to verify that customers received the appropriate credit. Verizon's internal auditors shall verify this on an annual basis. Credits will be paid in 90 days from the date the service quality results measured under this plan are finalized. Verizon will provide Staff with a report detailing the credit payments made.

Service Quality Link to Pricing Flexibility: If Verizon fails two Performance Objectives at the end of any Review Period, the following applies:

- Prospective pricing flexibility as provided in the Plan is suspended;
- Pricing flexibility is not restored until Verizon passes each performance objective for three consecutive months based on a rolling twelve-month average.[5]

[5] Should Verizon experience a company-wide work stoppage during the course of this Plan that causes Verizon to miss performance objectives set forth herein, Verizon can petition the Commission for an adjustment to and normalization of its performance results and can proceed to exercise its pricing flexibility pending the Commission's decision on that petition. Normalization of results will be performed in accordance with the service quality normalization process set forth in the March 13, 2001 memorandum from the Office of Communications to the Commission attached to the Commission's "Order Granting In Part and Denying In Part Requests for Waivers of Service Quality Targets," issued June 7, 2001 in Case 92-C-0665.